



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	04/01/13	Bill No:	Senate Bill 560
Program:	Sales and Use Tax	Author:	Anderson
Sponsor:	Author	Code Sections:	RTC 6357.9
Related Bills:		Effective Date:	Immediately

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

This bill provides a sales and use tax exemption for a qualified person's purchase of tangible personal property during a disaster period for use primarily for the performance of disaster- or emergency-related work in this state, as specified.

ANALYSIS

CURRENT LAW

Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law¹ imposes sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. The sales tax is owed by the retailer, but the retailer may collect reimbursement from its customer if the contract of sale so provides.² The sales tax is measured by gross receipts from retail sales. The use tax is owed by the purchaser, and is measured by the sales price of the property.

PROPOSED LAW

This bill adds RTC Section 6357.9 to exempt from sales and use tax, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased during a disaster period for use by a qualified person primarily for the performance of disaster- or emergency-related work in this state, as provided. This bill requires the purchaser to furnish the retailer with an exemption certificate, as specified.

As a tax levy, this bill goes into effect immediately. However, the exemption is operative on or after January 1, 2014.

Definitions. This bill defines the following key terms:

- "Declared state of disaster or emergency" means a disaster or emergency event for which the Governor has proclaimed a state of emergency or a major disaster or emergency for which the President of the United States has declared to exist in this state.
- "Disaster- or emergency-related work" means repairing, renovating, installing, building, or rendering services or other business activities that relate to infrastructure

¹ Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (RTC).

² Civ. Code, § 1656.1; Cal. Code Regs, tit. 18, § 1700.

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that has been damaged, impaired, or destroyed as a result of a declared state disaster or emergency.

- “Disaster period” means the period of time that begins no later than 10 days following the Governor’s proclamation of a state of emergency or the President’s declaration of a major disaster or emergency in this state, whichever occurs first, and that extends for a period of 60 calendar days following the termination of the declared disaster or emergency as proclaimed by the Governor or by concurrent resolution by the Legislature pursuant of Section 8629 or the President of the United States, whichever occurs first.
- “Infrastructure” means property and equipment owned or used by communication networks, gas and electric distribution systems, water pipelines, and public roads and bridges, and related support facilities that service multiple customers or citizens. Including, but not limited to, real and personal property, including buildings, offices, power lines, poles, pipes, structures and equipment.
- “Local agency” means a local agency as defined in Government Code Section 8620.2.
- “Primarily” means 50% or more of the time.
- “Qualified person” means a person, as defined in RTC Section 6005, but excluding an individual, that meets all of the following criteria:
 - The person is not doing business in this state prior to the commencement date of the declared state disaster or emergency.
 - The person is doing business in this state upon the request of a registered business or by a state agency or a local agency for the purpose of performing disaster-or emergency-related work.
- “Registered business” means a business entity that is registered to do business in this state prior to the commencement date of the declared state of disaster or emergency.
- “State agency” means a state agency as defined in Government Code Section 8680.8. This section specifically references the following agencies and offices, but does not limit the definition:
 - Department of Transportation
 - Department of Water Resources
 - Department of General Services
 - Department of Health
 - Department of Finance
 - University of California

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to ensure that taxes don’t take precedence over the lives of its citizens. Whether it’s a wildfire, earthquake, or other declared emergency, the author believes we should encourage, not penalize, the restoration and repair of damages to lives and property. This bill incentivizes doing good in our communities and easing the burdens on those who, in the darkest times, are easing ours.

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2. Suggested amendment. Amend Section 6357.9 (b)(3) to read:

“Disaster period” means the period of time that begins no later than 10 days following the Governor’s proclamation of a state of emergency or the President’s declaration of a major disaster or emergency in this state, whichever occurs first, and that extends for a period of 60 calendar days following the termination of the declared disaster or emergency as proclaimed by the Governor or by concurrent resolution by the Legislature pursuant of Section 8629 of the Government Code or the President of the United States, whichever occurs first.

3. Only out-of-state businesses would be exempt from taxation. The exemption only applies to a business that was not doing business in this state prior to the declared state of disaster or emergency. However, nothing in the bill prevents a new business entity from being created out-of-state at the time of the declared state of emergency by existing in-state businesses. For example, to obtain the exemption, several in-state construction companies may establish a separate joint venture, LLC or corporation for the duration of the disaster.

4. Scope of exempt property. The bill is not clear as to the scope of property qualifying for the exemption. Property can include, but is not limited to the following:

- Personal property (i.e. taxable food, clothing, personal hygiene, etc...)
- Supplies (i.e. cell phones, computers, office equipment/supplies, fuels, etc.)
- Small equipment purchases/rentals (i.e. hammers, drills, saws, compressors, generators, etc.)
- Large equipment purchase/rental (i.e. trucks, trailers, scaffolding, shoring materials, vessels, aircraft, graders, cranes, etc.)
- Construction materials (i.e. concrete, lumber, gravel, steel, asphalt, cables, pipe, wire, etc.)

5. Disasters and emergencies. Disasters and emergencies will vary from year to year and can be dramatically different with regard to type, geographic size, infrastructure impact costs and duration. The following is a summary of the California disasters or emergencies declared since 2003.

2012 - 3-Fires
2011 - 4-Fires, 1-Tsunami
2010 - 6-Fires, 2-Storms, 1-Earthquake (Imperial County)
2009 - 10-Fires
2008 - 18-Fires
2007 - 19-Fires, 1-Freeze
2006 - 8-Fires, 1-Storm
2005 - 7-Fires, 2-Storms, 1-Katrina Evacuation
2004 - 2-Fires, 1-Storm, 1-Flood (Levee Break)
2003 - 17-Fires, 1-Earthquake (San Luis Obispo County)

6. Qualified person. This bill excludes individuals from the definition of a qualified person. A qualified person would include a, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

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7. **Hiring of personnel.** The bill does not specify that the qualified person must bring or hire personnel from outside the state. The qualified person could utilize in-state personnel to perform all the disaster- or emergency-related work.
8. **Potential for confusion, negligence and fraud.** A retail business may find it difficult to distinguish a valid exemption certificate from a fake exemption certificate. During the confusion of a disaster or emergency, individuals and/or businesses may inadvertently or intentionally issue an exemption certificate to a retailer believing they qualify for the exemption. This could increase the use of the exemption beyond its intended purpose.
9. **Engaged in business.** A “qualified person” making retail, resale or other exempt sales of tangible personal property in California is a retailer engaged in business in this state. Therefore, an out-of-state retailer who makes exempt sales under this provision would be considered a retailer engaged in business in this state even if that is its only selling activity.

COST ESTIMATE

A detailed cost estimate is pending. However, the BOE would incur substantial costs to (1) develop regulations and administrative procedures, (2) program computer systems, (3) revise manuals and publications, (4) notify taxpayers of new exemption, (5) train staff, and (6) answer numerous inquiries. Some of these costs would be incurred after the effective date. Other costs would not be incurred until the period of the declared disaster or emergency.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to the Bureau of Economic Analysis, Californians spend an average 30% of their annual income on retail sales. The Bureau of Labor Statistics estimates there are 234,880 construction workers in the US, with average annual salary of \$45,809. Additionally, a study done by Trinity College estimated that 2% of out-of-state workers perform work on infrastructure projects. Based on these sources we estimate that, after a disaster, California could have 4,698 (234,880 X 2%) out-of-state construction workers assisting in disaster- or emergency-related work.

The Governor’s office maintains information concerning declared disasters and emergencies in California. This bill proposes an exemption period to last during the declared disaster time plus 60 days. Based on the information from the Governor’s office using different disaster scenarios (the 1994 Northridge earthquake, 2011 Tsunami, and others), there are three types of disaster periods: shortest duration 84 days; average duration 201 days; and longest duration 397 days.

Under the stated assumptions, the estimated affected taxable sales are as follows:

Out of state workers in CA	4,698
Average wage	45,810
Total wages	\$215,215,380
Retail sales percent	30%
Taxable sales per year	64,564,614
Taxable sales per day	\$176,889

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Estimated Taxable Sales under three different durations is:

- **Shortest Duration.** The taxable sales impact during a disaster period amounts to \$14.9 million (\$176,889 X 84 days).
- **Average Duration.** The taxable sales impact during a disaster period amounts to \$35.6 million (\$176,889 X 201 days).
- **Longest Duration.** The taxable sales impact during a disaster period amounts to \$70.2 million (\$176,889 X 397 days).

REVENUE SUMMARY

The estimated annual sales and use tax revenue loss under different scenarios is as follows:

	Shortest Duration	Average Duration	Longest Duration
Taxable Sales	\$14,900,00	\$35,600,000	\$70,200,000
State General Fund (3.9375%)	586,688	1,401,750	2,764,125
Fiscal Recovery Fund (.25%)	37,250	89,000	175,500
State Education Protection (.25%)	37,250	89,000	175,500
Local revenue Fund 2011 (1.0625%)	158,313	378,250	745,875
Local Revenue Fund (.5%)	74,500	178,000	351,000
Public Safety Fund (.5%)	74,500	178,000	351,000
Total	\$968,500	\$2,314,000	\$4,563,000

Qualifying Remarks. In years without a declared disaster, there would be no revenue impact. The exemption applies only to business entities that were not doing business in California prior to the commencement date of the declared state of disaster or emergency. The bill does not contain provisions to prevent a new out-of-state business from being created by an existing in-state business at the time of the declared state of emergency; for the sole purpose of avoiding tax. Additionally, this entity could hire in-state workers to perform the work which could increase the sales tax loss.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

Analysis prepared by:	Larry Bergkamp	916-322-7281	05/07/13
Revenue estimate by	Lisa Buchanan	916-445-0840	
Contact:	Michele Pielsticker	916-322-2376	
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